

**Before the
Commission on Common Ownership Communities
Montgomery County, Maryland**

In the Matter of

Olde Potomac Park Community Association x
c/o Lerch, Early & Brewer x
Suite 380 x
3 Bethesda Metro Center x
Bethesda, MD 20814, x
Complainant, x

v.

Steven and Janice Oppenheim x
15549 Owens Glen Terrace x
North Potomac, MD 20878, x
Respondents. x

Case No. 518-G
February 20, 2002

DECISION AND ORDER

The above-captioned case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On February 26, 2001, the Board of Directors of Olde Potomac Park Community Association (Complainant), a Homeowners' Association, filed a complaint with the Office of Common Ownership Communities against Steven and Janice Oppenheim (Respondents), residents of 15549 Owens Glen Terrace, North Potomac, Maryland, a unit within the Olde Potomac Park Community, alleging that Respondents are maintaining a window air conditioner in this house in violation of the Association's rules and governing documents.

Mr. and Mrs. Oppenheim responded that they had installed the air conditioner in the summer of 1997. The first notice they received that the air conditioner was in violation was on August 25, 1998. They responded to that notice on August 27, 1998, explaining that the third floor of the house was not adequately cooled by the central air conditioning unit and that their daughter suffers from allergies for which air conditioning and filtration are necessary. The next communication they received from the Association was dated March 15, 1999 to which they

replied by enclosing a copy of the letter of the previous August and indicating that the reasons stated there still applied. The correspondence continued but the dispute was not resolved. The letter from the Oppenheims in response to the complaint counters the complaint by alleging that several of their neighbors have satellite dishes which are also in violation of the Association documents and argues that the delays in pursuing enforcement against their window air conditioner make further action at this time unreasonable.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) of the Montgomery County Code on August 1, 2001, and the Commission voted that it was a matter within the Commission's jurisdiction. The case was scheduled for public hearing on October 10, 2001. At the request of the attorney for the Association the hearing was rescheduled for January 30, 2002. At the end of the hearing the record in this case was closed.

Findings of Fact

In accordance with the authority in Article V, Section 1. (c) of the Declaration of Covenants, Conditions and Restrictions (Declaration) of the Olde Potomac Park Community Association, in 1990 the Board of Directors adopted architectural guidelines. The Declaration and the guidelines which supplement it require application to the Community Architectural and Environmental Review Committee for any change which affects the exterior appearance of a structure in the community. The guidelines explicitly prohibit window or through-the-wall air conditioners and window fans.

The Oppenheims moved into the Community in 1996 and installed the window air conditioning unit in June 1997, without making application to do so. A letter was sent to them by the management company on behalf of the Community in August 1998 requesting that the air conditioner be removed. The correspondence continued sporadically over the next two years. In August 2000 the Community sent some literature on internal air conditioning units which might adequately substitute for the window unit.

Mr. Michael Potter, President of MTM Management Associates, the management company for the Community, testified that there had been two other instances of requests for or installation of window air conditioning units in the Community, both in the area in which the Oppenheims live. In one case, the residents had submitted an application to install a window air conditioner and Mr. Potter stopped by and explained to them that window air conditioners were prohibited in the Community. In the other instance, the residents had installed a window air conditioner without application. They had been asked to remove it and had done so.

Ms Joan Theis, President of the Board of Directors, testified that the position of the Board is that window air conditioners are not compatible with the design and standards of the Community. She had gone onto the Internet and found an internal air conditioning unit for \$600

plus \$80 for delivery.

Mrs. Oppenheim testified that the third floor of their house has almost no insulation and that it is chilly in the winter and hot in the summer. They had not read the Community documents and had gotten the window air conditioning installed in June after living in the house about eight months. The first letter from the Community had come during the following summer and they had sent an answer. Since they heard nothing more from the Community for some months, they had assumed that their answer had resolved the concern. She said that they did not intend to cause difficulty and that she was reassured by the information provided by Ms Theis' Internet search that they might be able to resolve the problem for \$700. She also indicated that she now understood that the government had prohibited community associations from regulating the placement of satellite dishes.

Conclusions of Law

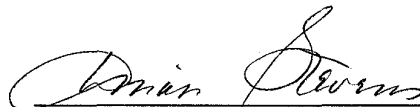
The Board of Directors is within the authority granted to them in the Declaration to prohibit window air conditioners within the Community. They have been consistent in enforcing this position. They did not waive the authority to require the Oppenheims to remove the window unit they had installed by the delays in enforcing the prohibition.

ORDER

Based on the evidence contained in the record, for the reasons set forth above, the Oppenheims are ordered to remove the air conditioner installed in their third floor window not later than May 15, 2002.

The foregoing was concurred in by panel members Gaffigan, Perlingiero and Stevens.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure.



Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities